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Attorney Ref.: 60681.400302

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Giocar America, )  
Opposer, )  
vs. )  
Braking Italia s.r.l., )  
Applicant )  
\_\_\_\_\_ )

Opposition No. 91159338  
Serial No. 78/164297  
Registration No. 2,742,046



03-22-2004

U.S. Patent & TMO/TM Mail Rcpt Dt. #22

TO: Box TTAB NO FEE  
PATENT and TRADEMARK OFFICE  
TRADEMARK TRIAL and APPEAL BOARD  
2900 Crystal Drive  
Arlington, Virginia 22202-3513

**APPLICANT'S ANSWER TO NOTICE OF OPPOSITION**

Applicant, Braking Italia s.r.l ("Braking"), for its answer to the Notice of Opposition filed by Giocar America, Inc. dba Galfer, Galfer USA and Galfer Braking Systems against Registration No. 2,742,046, Serial No. 78/164297 of the Braking trademark WAVE (in plain typed block letter form), pleads and avers as follows:

1. Answering paragraph 1 of the Notice of Opposition, Applicant admits the allegation contained therein, with the proviso that Applicant's claimed date of first use is "at least as early as" 31 October 2000, and that Applicant has, on its own and through use by Opposer, earlier dates upon which use was made.
2. Answering paragraph 2 of the Notice of Opposition, Applicant admits that Opposer has been engaged in sale of brake products for vehicles and manufacture of some such, but specifically denies that Opposer has engaged in the manufacture of brake disks for such period.

3. Answering paragraph 3 of the Notice of Opposition, Applicant denies such, except to the extent that some use of the WAVE mark was made by Opposer with the permission of Applicant, and that such use was made only on Applicant's products.

4. Answering paragraph 4 of the Notice of Opposition, Applicant denies such.

5. Answering paragraph 5 of the Notice of Opposition, Applicant admits that the goods are identical and asserts that they go beyond this, as the goods upon which Opposer claims usage are indeed Applicant's goods.

6. Answering paragraph 6 of the Notice of Opposition, Applicant admits that the marks are identical and asserts that the circumstances go beyond this, as the mark which Opposer claims to have used is indeed Applicant's mark on Applicant's goods.

7. Answering paragraph 7 of the Notice of Opposition, Applicant asserts that use of the WAVE mark was made in ways which inured to the benefit of Applicant prior to Applicant's asserted use dates in that Opposer used Applicant's mark on Applicant's goods during that time period.

8. Answering paragraph 8 of the Notice of Opposition, Applicant asserts that any damage suffered by Opposer as a result of the registration to Applicant is irrelevant as Opposer was fully aware of Applicant's superior rights and has nonetheless continued to use the WAVE mark without authorization or permission.

#### Affirmative Defenses

In addition to denying the allegations made by Opposer, Applicant further affirmatively asserts the following defenses.

1. Applicant created, developed and used the WAVE mark in connection with its products in Italy long before any usage by Opposer. Opposer was aware of such.

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Mark: WAVE  
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Opposer: Giocar America, Inc.  
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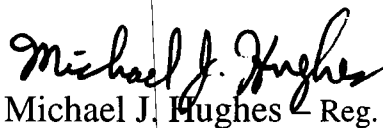
2. Opposer obtained the goods sold under the WAVE trademark from Applicant (through Opposer's parent operation, Galfer Industrias) and effectively acted as Applicant's U.S. sales operation for such goods. As such, all use of the WAVE mark by Opposer inured to the benefit of Applicant.

3. To the extent that Opposer has continued any use of the WAVE mark since it ceased receiving Applicant's products and stopped using the mark on Applicant's goods, such use has been without authorization and permission, and is therefore of no import.

In view of the foregoing, Applicant contends that this Notice of Opposition is groundless and baseless in fact; and that Opposer has not shown wherein it will be, or is likely to be, damaged by the registration of Applicant's trademark.

for Braking Italia s.r.l.

Date: 9 March 2004



Michael J. Hughes - Reg. No 29,077

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CASE NAME: Giocar America, Inc. vs. Braking Italia s.r.l.  
CASE NO.: 91159338  
PROOF OF SERVICE

The undersigned certifies and declares as follows:

I am over 18 years of age and am not a party to this action. My business address is 1901 South Bascom Avenue, Suite 660, Campbell, California 95008, which is located in the county where any non-personal service described below took place.

On 10 March 2004, an original and three copies of the following document:

APPLICANT'S ANSWER TO NOTICE OF OPPOSITION

were served on the following:

Served on:

Commissioner for Trademarks  
BOX: TTAB, NO FEE  
2900 Crystal Drive  
Arlington, Virginia 22202-3513

Represented party:

Applicant, Braking Italia s.r.l.

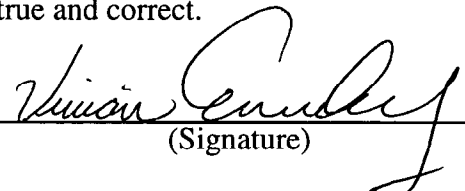
Service was accomplished as follows:

[xx] **By First Class Mail, Postage Prepaid, According to Normal Business Practices.** On the above date, at my place of business at the above address, I sealed the above document(s) in an envelope addressed to the above, and I placed that sealed envelope for collection and mailing following ordinary business practices, for deposit with the U.S. Postal Service. I am readily familiar with the business practice at my place of business for the collection and processing of correspondence for mailing with the U.S. Postal Service. Correspondence so collected and processed is deposited with the U.S. Postal Service the same day in the ordinary course of business, postage fully prepaid.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 10 March 2004.

Vivian Emberley

  
(Signature)

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was served on the following:

Served on:

Stephen D. Burbach  
CHRISTIE PARKER & HALE LLP  
P.O. Box 7068  
Pasadena, California  
91109-7068

Represented party:

Opposer, Giocar America, Inc.

Service was accomplished as follows:

[xx] **By First Class Mail, Postage Prepaid, According to Normal Business Practices.** On the above date, at my place of business at the above address, I sealed the above document(s) in an envelope addressed to the above, and I placed that sealed envelope for collection and mailing following ordinary business practices, for deposit with the U.S. Postal Service. I am readily familiar with the business practice at my place of business for the collection and processing of correspondence for mailing with the U.S. Postal Service. Correspondence so collected and processed is deposited with the U.S. Postal Service the same day in the ordinary course of business, postage fully prepaid.

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Vivian Emberley

  
(Signature)